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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 42109
)	
v.)	PAYETTE COUNTY NO. CR 2012-2423
)	
MICHAEL CULLEY,)	REPLY BRIEF
)	
Defendant-Appellant.)	

COPY

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF PAYETTE

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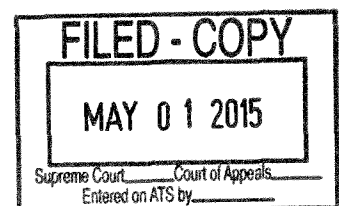


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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Michael Culley pleaded guilty to second degree murder. Mr. Culley later filed a motion to withdraw his guilty plea, which the district court denied. The district court imposed a unified sentence of life, with 45 years fixed.

In his Appellant's Brief, Mr. Culley argued that the district court abused its discretion when it denied his motion to withdraw his guilty plea because he presented a just reason to withdraw his guilty plea. He asserted that his plea was not knowing, intelligent, and voluntary because he was intimidated and threatened with physical harm if he did not plead guilty. Additionally, he argued that after his medications were changed, his memory improved, and he was able to remember more details about the night of the murder, which he believed would help him to prove that he was not guilty. He also asserted that the district court abused its discretion when it imposed his sentence because there was a wealth of mitigating information that the district court failed to adequately consider.

In response, the State argues that this Court should decline to consider Mr. Culley's argument regarding his motion to withdraw his guilty plea because his plea agreement included a waiver of his right to file such a motion. This argument fails because the fact that the district court considered the motion on its merits implies that it considered the waiver invalid. Indeed, such waivers are inherently invalid because it is axiomatic that if a guilty plea is not knowing, intelligent, and voluntary, a waiver of the right to file a motion to withdraw that guilty plea cannot be knowing, intelligent, and

voluntary. Thus, as the district court apparently realized, consideration of the motion on its merits is necessary.

Alternatively, the State argues that, should this Court consider the motion, Mr. Culley has failed to show that the district court abused its discretion when it denied the motion. In support of this, the State makes several arguments, most of which share a similar flaw; they all depend on Mr. Culley's admissions, which he had to make in order for his plea to be accepted in the first place. For example, the State points out that Mr. Culley signed the plea agreement, which included his representation that his decision to plead guilty was not coerced. However, the reality is that the district court would not have accepted the plea in the first place if Mr. Culley had not made that representation. And a defendant who is coerced to plead guilty has no choice but to make such a representation. Additionally, the State argues that there was no way Mr. Culley could have been under the influence of drugs which adversely affected his memory because he told the district court that he was not. But again, if a defendant is being coerced to plead guilty, he cannot admit that he is having trouble remembering details about the incident that led to the charges against him.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Culley's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Did the district court abuse its discretion when it denied Mr. Culley's motion to withdraw his guilty plea?
2. Did the district court abuse its discretion when it imposed a unified sentence of life, with 45 years fixed, following Mr. Culley's plea of guilty to second degree murder?¹

¹ Mr. Culley is not replying to the issue of whether the district court abused its discretion when it imposed his sentence because the State's reply is not remarkable. Accordingly, Mr. Culley simply refers the Court back to pages 12-18 of his Appellant's Brief.

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Culley's Motion To Withdraw His Guilty Plea

A. Introduction

The State argues that because Mr. Culley's plea agreement included a waiver of the right to file a motion to withdraw his guilty plea, this Court should decline to consider his motion. However, it is clear that the district court did not believe the waiver was valid because it ignored it and decided the motion on the merits. The transcript from the change of plea hearing supports this conclusion because the district court reviewed all the rights that Mr. Culley was waiving by pleading guilty but never mentioned the waiver of his right to file a motion to withdraw his guilty plea. Alternatively, the State argues that Mr. Culley has failed to show that the district court abused its discretion when it denied his motion. This argument fails because the record makes it clear that Mr. Culley presented a just reason to withdraw his guilty plea.

B. This Court Should Disregard The Waiver Of Mr. Culley's Right to Withdraw His Guilty Plea Because Such Waivers Are Inherently Invalid

The State asserts that because Mr. Culley's plea agreement contained a waiver of his right to file a motion to withdraw his guilty plea, this Court should decline to consider the issue and affirm based on the waiver. (Resp. Br., pp.5-6.) However, as noted in his Appellant's Brief, the district court disregarded the waiver and decided the motion on its merits. (App. Br., p.2.) Indeed, throughout the proceedings, the district court ignored the waiver. For example, in its memorandum decision denying the motion to withdraw the plea, the court stated: "The State correctly asserts that the defendant waived his right to withdraw his guilty plea based on the terms of the Rule 11 plea

agreement. Ordinarily, the Court's analysis would end here as the defendant's plea was constitutionally valid and his rights were waived. However, this Court will analyze the defendant's proposed reasons as if he did not waive his right to withdraw his guilty plea." (R., p.139.) Therefore, although the district did not make a specific finding that the waiver was invalid, that finding is implicit in the fact that it considered the motion on its merits. *See State v. DuValt*, 131 Idaho 550, 553 (Ct. App. 1998) ("[i]mplicit findings of the trial court supported by substantial evidence should be given due deference.").

Furthermore, the district court did not mention the waiver during the change of plea hearing. When Mr. Culley pleaded guilty, the district court made an effort to ensure that Mr. Culley was aware of all the rights he was waiving. For example, when discussing the rights that Mr. Culley was waiving, the district court reviewed the plea agreement with Mr. Culley and said "[I]f you enter a plea of guilty, you're waiving your right to remain silent. You're waiving your right to a jury trial. You're waiving your right to present any defenses you have to this charge, and you're waiving your right to confront your accusers." (Tr. 10/9/13, p.6, L.22 – p.7, L.1.) And, later in the hearing, the district court said "Also, in this agreement it provides that you agree that you will not file a Motion to Reduce or Amend your sentence [Rule 35 motion] once it's imposed by the court. Do you understand that?" (Tr. 10/9/13, p.11, Ls.17-20.) Mr. Culley confirmed that he did understand, and the district court stated that the plea agreement did not prevent Mr. Culley's right to appeal after sentencing. (Tr. 10/9/13, p.11, L.21 – p.12, L.13.)

Notably, the language regarding the waiver of his right to file a Rule 35 motion was on the same page, and in the same section, as the waiver of his right to file a

motion to withdraw a guilty plea. (See Plea Agreement, p.4 (attached to PSI).) Both waivers were listed in Section 10 of the plea agreement; the waiver of the right to file a Rule 35 motion was in subsection “10(a),” and the waiver of the right to file a motion to withdraw a guilty plea was in subsection “10(b).” (Plea Agreement, p.4.) The district court could not have missed subsection “b,” but it only discussed subsection “a.” This certainly represents substantial evidence that it found the waiver invalid.

There are good reasons for that finding. Indeed, it is self-evident that if a defendant’s plea is not knowing, intelligent, and voluntary, the defendant’s waiver of the right to file a motion to withdraw that plea cannot be knowing, intelligent, and voluntary either. Therefore, it would be unfair to enforce such a waiver. The Idaho Supreme Court’s analysis of a similar waiver is instructive. In *State v. Murphy*, the Court held that a defendant can waive a statutory right to appeal as long as the waiver is made “knowingly, intelligently, and voluntarily,” using the same analysis for determining the validity of a guilty plea. 125 Idaho 456, 457 (1994). In that case, the Court noted that Murphy:

knew full well the consequences of waiving his right to appeal the judgment and sentence. In the colloquy between the district court judge and Murphy, the judge specifically inquired about Murphy’s waiver of his right to appeal and confirmed that Murphy had no questions about that waiver. The record is clear that Murphy accepted the risks in exchange for the State’s dismissal of three counts of kidnapping and one count of robbery.

Id.

Here, by contrast, Mr. Culley was not fully informed of the consequences of his waiver as that issue was never discussed by the district court during his change of plea hearing. (See Tr., 10/9/13 generally.) At no point during the change of plea hearing

was the waiver of his right to file a motion to withdraw his plea discussed or acknowledged by the district court, or any party to the proceeding. Again, during the hearing, the district court informed Mr. Culley of some of the rights he would be waiving, such as the right to a jury trial and the right to file a Rule 35 motion, but it never discussed the waiver in question. (See Tr. 10/9/13, p.3, L.4 – p.12, L.13.)

Accordingly, there is substantial evidence that the district court found that the waiver could not be valid. The district court obviously realized that in order to determine whether the waiver was knowing, intelligent, and voluntary, it had to first determine whether the plea was knowing, intelligent, and voluntary. Therefore, it disregarded the waiver. The State asserts that “Culley’s motion was precluded by his plea agreement, and the district court should have declined to consider it.” (Resp. Br., p.5.) However, it is clear that the district court comprehended the problematic and circular nature of such a waiver and therefore considered the motion on its merits. Accordingly, this Court should disregard Mr. Culley’s waiver.

C. Mr. Culley Presented A Just Reason To Withdraw His Guilty Plea Because His Plea Was Not Made Knowingly, Intelligently, And Voluntarily

The State argues that the district court did not abuse its discretion when it denied Mr. Culley’s motion to withdraw his guilty plea because Mr. Culley’s “plea was constitutionally valid and Culley offered no just reason to withdraw it.” (Resp. Br., p.17.) In support of this, the State depends, in large part, on the fact that Mr. Culley did not originally reveal to the district court that he felt threatened to plead guilty, and represented that he was not under the influence of any drugs or medication that would affect his ability to understand the plea agreement and its consequences. (Resp.

Br., pp.9-10.) These arguments fail for the simple reason that if Mr. Culley had not made those representations, the district court would not have accepted his guilty plea in the first place. Indeed, it is only logical that any defendant who feels threatened to plead guilty must do everything in his power to ensure that the district court accepts his plea. Thus it is not surprising that the district found that Mr. Culley's responses to its questions were "clear, coherent, and deliberate." (Resp. Br., p.10.) If he admitted to the district court that he felt threatened to make the plea, or that he did not remember the crime clearly, the district court could not have accepted his plea.

With respect to the State's argument that the factual basis of Mr. Culley's "coercion claim" was controverted by the testimony at the hearing on his motion, the State makes the same problematic assumption as the district court – that the jail staff was privy to every incident that took place between the inmates. (See Resp. Br., pp.12-13.) The State, like the district court, relies on the fact that the jail commander (Deputy Costner) testified that the jail kept a record of incidents between inmates. (R., p.140; Resp. Br., pp.12-13.) In fact, Deputy Costner testified that there was a video system that monitored all the areas of the jail. (Tr. 3/13/14, p.25, Ls.10-18.) But even with a video system, it would be very difficult for the staff of the jail to be aware of all such incidents, and clearly impossible to monitor a large percentage of the simple conversations that took place in the jail.² (R., p.140.) Such subtleties of jail life are not typically detectable.

² Deputy Costner testified that he only learned of the incident between Mr. Culley and Mr. Palomares because someone "advised" him that it had occurred. (Tr. 3/13/14, p.25, Ls.6-8.) Therefore, he went back and reviewed the video from the dining hall. (Tr. 3/13/14, p.25, L.10 – p.26, L.7.) This proves that the video system, while it may

Additionally, the threat that Mr. Culley was concerned about was the result of a conversation, not an altercation. In his second affidavit in support of his motion, he said “The individual who told me to plead guilty and not testify against the codefendant or else I would suffer physical harm had the name Riggs and I believe his first name was John.” (Second Affidavit of Michael Culley in Support of Motion to Withdraw Guilty Plea – augmented to the record on 12/4/14.) The State argues that “[t]here was . . . no record of an altercation between Culley and Riggs.” (Resp. Br. p.13.) But Mr. Culley never claimed that there was a physical altercation. Indeed, the threat from Mr. Riggs was exactly the sort of behavior that would go undetected in the jail. And Mr. Riggs was in the Payette County Jail and was housed with the codefendant in this case. (Tr. 3/13/14, p.32, Ls.8-19.) This certainly supported Mr. Culley’s claim that he was threatened by Mr. Riggs to plead guilty and not testify against his codefendant. Most importantly, it shows that the district court’s finding that there was “no evidence in the record to indicate that the defendant was coerced into pleading guilty by threats of physical harm” was clearly erroneous. (R., p.140.) Instead, the evidence showed that Mr. Culley presented a just reason to withdraw his plea and go to trial.

The State also argues that the district court “correctly rejected Culley’s claim that he should be entitled to withdraw [his] plea based on his change of medication and new memories.” (Resp. Br., p.17.) It asserts that Mr. Culley’s new memories “do not constitute a just reason to withdraw his plea.” (Resp. Br. p.16.) But Mr. Culley’s memory of the event was certainly more detailed. (See App. Br. pp.9-12.) The State’s

have been on “24/7,” was not monitored on a continuous basis, so many incidents could have gone undetected. (Tr. 3/13/14, p.25, Ls.17-20.)

argument that “Culley provided a factual basis for his guilty plea” is problematic for two reasons. First, while on a complex mental health medication regimen, a person likely can’t understand the regimen’s more subtle effects on memory until the medication is changed and memory improves. Second, even if he was initially having trouble remembering some of the details of the event, if he was being threatened to plead guilty, he would be fearful to admit that. Finally, Mr. Culley’s medication was changed dramatically from the time Dr. Ward first met with him, in December of 2013 and January of 2014, to when he met with Mr. Culley again in early March of 2014 and stated that Mr. Culley’s “memory component was improved,” and he was providing more details about the event. (See Tr. 3/13/14, p.10, L.16 - p.16, L.8.) Indeed, Mr. Culley was taken off narcotic medications during that time. (Tr. 3/13/14, p.15, Ls.10-22.) This change alone supports the idea that his memory was better and explains why Dr. Ward said his speech was more “pressured” and “rapid.” (Tr. 3/13/14, p.11, Ls.17-18.)

Given the new information Mr. Culley provided about the threats made against him and his improved memory of the crime, Mr. Culley presented a just reason to withdraw his plea. Thus, the district court abused its discretion when it denied his motion.

CONCLUSION

Mr. Culley respectfully requests that this Court vacate his judgment of conviction and remand his case to the district court with direction to grant his motion to withdraw his guilty plea. Alternatively, he requests that this Court reduce his sentence as it deems appropriate or remand his case to the district court for a new sentencing hearing.

DATED this 1st day of May, 2015.

A handwritten signature in black ink, appearing to read 'R. P. Anderson', written over a horizontal line.

REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of May, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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